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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,701	02/12/2004	J. Richard Braun	078146/2	5720

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,701

Applicant(s)

BRAUN, J. RICHARD

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-28 and 31-41 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 23-26 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 12, 15-22, 27, 28, 31-33, 40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The non-final rejection mailed 8/2/05 has been withdrawn in view of the following:

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1,3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the subcombination a planter receptacle (note, adapted to be mounted to a railing is not positively recited and merely functional language); however, claims 3-6 recite the combination of a planter receptacle and a railing with at least one baluster. Therefore, the scope of the claims is inconsistent, and thus, the claims should be amended to consistently recite either the combination or the subcombination.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-2,11-12,15-16,40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert (AU-A-52021/96) in view of Reed (6655083).

For claim 1, Gilbert teaches a planter receptacle 50 adapted to be mounted to a railing 32,46,58, comprising: a front wall (fig. 11, wall facing the viewer of the patent); a

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back wall (fig. 11, the wall opposite the front wall facing the view of the patent); first and second spaced-apart side walls (the other two side walls), wherein said front wall is connected to said first and second side walls; and said back wall is connected to said first and second side walls, forming an enclosure with said front wall, said back wall, and said first and second spaced-apart side walls. However, Gilbert is silent about hanging means being a chain.

Reed teaches hanging means such as chain 19,15a,15b in her planter receptacle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the chain as taught by Reed in the planter receptacle of Gilbert in order to further secure the planter receptacle onto the railing or the support.

For claim 2, Gilbert as modified by Reed (emphasis on Gilbert) further teach a bottom wall (in the area of ref. 56), wherein said bottom wall forms at least a portion of the underside of said enclosure formed by said front wall, said back wall, and said first and second spaced-apart side walls.

For claims 11-12, Gilbert as modified by Reed (emphasis on Gilbert) further teaches connecting means 52 attached to the wall 54 to enable the receptacle to be placed on the post at various vertical positions on the post.

For claims 15-16, Gilbert modified by Reed further teach wherein said hanging means can functionally be attachable to said railing, and wherein said hanging means can functionally enables said planter receptacle to be positioned at a variable height with respect to said railing.

For claim 40, Gilbert as modified by Reed further teach wherein said connecting means enables said planter receptacle to be positioned at a variable height with respect to said railing.

6. **Claims 3-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert as modified by Reed as applied to claim 1 above, and further in view of Tilton (6796539).

For claims 3-4, Gilbert modified by Reed (emphasis on Gilbert) further teach said planter receptacle further comprising: means for stabilizing said planter receptacle with respect to said railing, wherein said stabilizing means at least partially surrounds said post and is attached to at least one wall of said planter receptacle, wherein said stabilizing means comprises: at least a first interior wall 54 connected to said first and second spaced-apart side walls between said front wall and said back wall, creating a first enclosure formed by said front wall, said first interior wall, and a portion of said first and second spaced-apart side walls, and a second enclosure formed by said first interior wall, said back wall, and a portion of said first and second spaced-apart side walls, wherein said first interior wall, said back wall, and said portion of said first and second spaced-apart side walls at least partially surround at least one post of said railing when said planter receptacle is mounted to said railing. However, Gilbert as modified by Reed are silent about the railing further comprising at least one baluster.

Tilton teaches using balusters to mount a planter receptacle. It would have been an obvious substitution of functional equivalent to substitute the post of Gilbert as

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modified by Reed with the baluster as taught by Tilton, since both types of railing would perform the same function to hold the planter receptacle in a vertical position.

For claim 5, Gilbert modified by Reed and Tilton (emphasis on Gilbert) teaches the interior wall 54 is parallel to the back wall.

For claim 6, Gilbert modified by Reed and Tilton (emphasis on Gilbert) teaches a bottom wall (at ref. 56), wherein said bottom wall forms at least a portion of the underside of said first enclosure formed by said front wall, said first interior wall, and a portion of said first and second spaced-apart side walls.

7. **Claims 17-22,27-28,31-33,41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert (as above) in view of Reed (as above) and Tilton (as above).

All limitation in these claims have already been explained above; therefore, please see above.

Response to Arguments

8. Applicant's arguments with respect to claims 1-6,11-12,15-22,27-28,31-33 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn